

**INVITATION TO BID
INFORMAL – Recore of Bus Radiators**



City Of High Point
Purchasing Division
211 S. Hamilton St., PO Box 230
High Point, NC 27260
Phone: 336-883-3219 Fax: 336-883-3248
Tarinda Chappell, Purchasing Manager

INFORMAL BID NUMBER: 2828-082515

DATE: August 17, 2015

QUOTE DUE NO LATER THAN:

**Tuesday, August 25, 2015
Before 4:00 PM**

BUYER: Michelle Kiefer

michelle.kiefer@highpointnc.gov

TELEPHONE: (336) 883-3221

Bid price shall be FOB Destination and include delivery to:

City of High Point

Vendor Information:

Vendor Name (include d/b/a information if applicable)

Entity Formation (check applicable): ☐ Corporation ☐ Limited Liability Company ☐ Partnership ☐ Sole Proprietorship
☐ Limited Company ☐ Limited Partnership

Street Address

P.O. Box

City, State & Zip

Email Address

Telephone Number

Federal Tax ID #/Social Security #

General Contractor License # (if applicable)

Print Name & Title of Person Signing on Behalf of Vendor

Vendor's Authorized Signature

Offer valid for **45** days from date of bid opening. After this time, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this Invitation to Bid.

- Pursuant to General Statutes of North Carolina, Section 143-129, as amended, bids and proposals are subject to the conditions and specifications herein, are invited for materials and equipment as described herein.
- Prices or any other entry made hereon by the bidders shall be considered firm and not subject to change or withdrawal.
- Bidders certify under penalty of perjury that this bid has not been arrived at collusively and that no Federal or North Carolina antitrust laws have been violated.
- State and County sales **taxes shall not be included** in the bid prices. Sales tax shall be added to vendors invoice and will be paid to vendor at time of invoice payment.
- Bidders shall sign this form and return it with additional bid documents on or before the above date and time, to the City of High Point Purchasing Division, P O Box 230 (27261), 211 S. Hamilton St., High Point, NC 27260
- Failure to execute/sign this bid properly prior to submittal shall render the bid invalid and it **WILL BE REJECTED**. Late bids will **NOT** be accepted.

By checking this box, the above signed vendor acknowledges that terms and conditions associated with this bid have been read and accepted. ☐

BID SUBMISSION INSTRUCTIONS: Mail only one fully executed bid document, unless otherwise instructed, and only one bid per envelope. Address envelope and insert bid number as shown below. It is the responsibility of the bidder to have the bid in this office by the specified time and date of opening. Bids must be submitted on the form below. Bids not submitted on this form will be rejected.

Bids may be returned by fax to 336-883-3248 or email: michelle.kiefer@highpointnc.gov.

<u>DELIVERED BY US POSTAL SERVICE</u>	<u>DELIVERED BY ANY OTHER MEANS</u>
Michelle Kiefer Bid #2828-082515 City of High Point PO Box 230 High Point, NC 27261	Michelle Kiefer Bid #2828-082515 City of High Point 211 S. Hamilton Street, Room 215 High Point, NC 27260

REFERENCES

Vendor shall provide at least three (3) references for which your company has provided goods or services of substantially the same features and quantity to those solicited herein. The City may contact these references to determine the goods provided are substantially similar to those bid herein and the Vendor's performance has been satisfactory. Such information may be considered in the evaluation of the bid.

COMPANY NAME	CONTACT NAME	TELEPHONE NUMBER

BID TABULATIONS: Bid Tabulations will be posted to the City's website www.highpointnc.gov/purchasing . Bids will NOT be publicly opened and bid tabulations will not be posted until AFTER bid has been awarded.

TRANSPORTATION CHARGES: FOB HIGH POINT, NORTH CAROLINA WITH ALL TRANSPORTATION CHARGES PREPAID AND INCLUDED IN BID PRICE

AWARD CRITERIA: As provided by Statute, award will be based on the lowest and best bid(s) most advantageous to the City of High Point as determined by consideration of:

- Price
- Quality of products offered
- General reputation & performance capabilities of bidder
- Proven performance of equipment or goods offered
- Conformity with intent of specifications herein
- Bidder's previous performance in contract with the City
- Conformity with the terms and conditions of this Invitation for Bid
- Adequate availability of service and parts
- Delivery

AWARD OF CONTRACT: It is the general intent to award this contract to a single overall bidder on all items. The right is reserved; however, to make awards on the basis of individual items or groups of items, if such shall be considered by the City to be most advantageous or to constitute its best interest.

The City reserves the right to reject any and/or all proposals as deemed to be in the best interest of the City.

The City reserves the right to award quantities greater or less than proposed based on funds and or need.

MAKE AND MODEL: Manufacturer's name and model/catalog numbers, if used, are for the purpose of identification and to establish general quality level desired. Such references are not intended to be restrictive and comparable products of other manufacturers will be considered. However, bidders are cautioned that any deviation from specifications must be pointed out in their bid.

DEVIATIONS: Any deviations from specifications and requirements herein must be clearly pointed out by bidder. Otherwise it will be considered that equipment or goods offered are in strict compliance with these specifications and requirements; a successful bidder will be held responsible therefore. Deviations must be explained in detail. However, the City makes no implication that deviations will be acceptable. Bidder is advised that the response (or lack thereof) on this question does not take precedence over specific responses or non-responses provided elsewhere in this bid.

SALES TAX: **Do not include Sales Tax bid price.** Sales tax shall be added to invoice and will be paid at time of invoice payment.

SPECIFICATIONS

Bid #2828-082515

Recore of Bus Radiators

SCOPE: It is the intent of this Invitation for Bids to establish a vendor for the recoring of bus radiators, part #RR3DN450/01, for the City of High Point Transit Division of the Transportation Department.

SPECIFICATIONS:

- Core material: copper.
- Core size: 22 3/8" X 27 1/2" X 4 1/2"
- Header size: 27 1/2" X 5"
- Fins – 11 1/2", 6 ROWS
- Tubes: 3/4"
- Centers: 1/2"
- Headers with corner plate supports

WARRANTY: Core shall have a minimum 1 year warranty from the date installed on the equipment. Vendor will be responsible for the pick-up and delivery of radiators to the Transit Department.

DELIVERY: Delivery is required within a reasonable and timely manner given the type of equipment specified herein.

CONTRACT PERIOD: This contract is for a one-year period to begin **September 1, 2015** and end **August 31, 2016**. All terms and conditions of Bid # **2828-082515** apply to this contract award as if attached hereto. This contract may be renewed for four (4) additional one-year periods if terms and pricing are agreeable to both parties.

Price increases will be allowed if vendor can show increased cost due to economic reasons such as labor, fuel cost, etc. A request for increase must be submitted to the City sixty (60) days prior to the contract renewal date. Contractor must provide documentation and/or records to justify the request for a price increase. Price increases will be reviewed by the City of High Point and the City reserves the right to accept or reject any price increase request. Price increases will become effective on the first day of the contract renewal. Contract extension will be contingent upon the appropriation of funds by the City of High Point. The City reserves the right to extend, renew or not renew the contract. All prices offered shall be firm against any price increase for one (1) year from the effective date of the contract. Price increases are not to exceed 3% per year over the five (5) year contract period.

BID FORM

QUANTITY	DESCRIPTION	UM	UNIT PRICE	TOTAL PRICE
1	Recore of Bus Radiators <i>(Per specifications attached)</i>	EA	\$	\$

INSTRUCTIONS TO BIDDERS

GENERAL: All bids are subject to the provisions of the attached General Contract Terms and Conditions. All bid responses will be controlled by the Terms and Conditions included by the City of High Point. Bidder terms and conditions included as a part of published price lists, catalogs, and/or other documents submitted as a part of the bid response are waived and will have no effect either on the bid, or any contract which may be awarded as a result of this bid. **The attachment of any other terms and conditions may be grounds for rejection.**

Bidder specifically agrees to the conditions set forth in this paragraph by signature of the "BID" contained herein.

Revised 6.17.15

Pursuant to G.S. 143-48 and Executive Order No. 77, the State invites and encourages participation in this procurement by a business owned by minorities, women, and the handicapped.

MAKE AND MODEL: Indicate manufacturers' name and model number of item(s) offered in the spaces provided. The purpose of these specifications is to identify and establish general quality level desired. Any references to brand names are not intended to be restrictive and comparable products of other manufacturers will be considered. However, bidders are cautioned that any deviation from specifications must be pointed out in their bid. **Complete descriptive literature and manufacturer's specifications shall be included in the bid.**

WARRANTY: Equipment shall be new and shall be guaranteed against defect in materials, workmanship, and performance in accordance with the manufacturer's standard warranty, except that in no event shall such coverage be less than one (1) year. Warranty coverage shall begin on the date of acceptance by the City of High Point. **Warranty service shall be available on site** at any location within the state of North Carolina. Defective units shall be repaired or replaced during the warranty period at no cost to the City of High Point or its representative.

INSTRUCTION BOOK: The vendor shall furnish a booklet or pamphlet giving complete instructions for the operation, lubrication, adjustment, and care of the equipment.

TRAINING: Quoted price to include comprehensive training for technicians and operators. All training and materials shall be provided by successful bidder at no additional cost to the City of High Point. Training shall include troubleshooting and proper operation of all equipment.

SAFETY: The successful bidder shall be required to take safety precautions in an effort to protect persons and City property. All contractors and sub-contractors shall conform to all OSHA, State and County regulations while performing under the terms and conditions of this contract. Any fines levied by the above mentioned authorities because of inadequate compliance with these requirements shall be borne solely by the successful bidder which is responsible for same. Barriers shall be provided by the successful bidder when work is performed in areas traversed by persons or when deemed necessary by the City.

DEMONSTRATION: Bidder must be capable of demonstrating proposed equipment within seven (7) consecutive calendar days after notification at no additional cost to the City. If required, this will be a comprehensive demonstration at a site designated by the City with hands-on participation by agency operator(s) if necessary. Bids that fail to comply with this requirement may be subject to rejection.

EQUIPMENT AND ACCESSORIES: All equipment and accessories listed as standard items in the manufacturer's current product literature, but not listed in these specifications shall be included with the equipment.

SERVICE UPON DELIVERY: Equipment shall be complete, serviced and ready for operation. The City will only accept and approve for payment equipment that is complete in every respect and ready for operation.

STANDARD PRODUCTION MODEL: It is a requirement that the equipment herein requested be the "standard production model of the latest design". To meet this requirement the equipment offered shall be new and the latest production model as represented in the manufacturer's current published literature intended for the general public. Such literature must represent the specific configuration offered. Equipment offered otherwise may be subject to rejection.

CLEAN UP: Upon completion of the equipment delivery, the bidder shall remove and properly dispose of all packaging waste and debris from the user's site. The bidder shall be responsible for leaving the delivery areas clean and ready to use.

The omission of any standard feature described herein shall not void the bidder's responsibility to furnish a complete system with all standard equipment of the manufacturer's latest model in current production. The bidder shall represent by their bid that all equipment to be furnished shall be new and unused. The unit, as specified, shall be completely assembled and adjusted and all equipment, standard and optional will be installed and ready for use. The following specifications are the minimum acceptable specifications and failure to comply may be used as basis for rejection of bid. If the equipment offered differs from the provisions contained herein, these differences must be explained in detail. Bidder must include copy of printed manufacturer's specification sheet with bid.

INSURANCE: Successful bidder shall be required to provide insurance as required in Section 17 of the General Terms and Conditions.

SPECIFICATIONS: Manufacturer's name and catalog numbers used in this bid are product specific unless the description states equivalent acceptable. These products are required for compatibility and continuity of support.

BID EVALUATION: The City of High Point reserves the right to reject any bid on the basis of the function, compatibility with user requirements, as well as cost. The City of High Point reserves the right to award this contract to a single overall bidder on all items, or to make award on the basis of individual items or groups of items, whichever shall be considered by the City of High Point to be most advantageous or to constitute its best interest. Bidders should show unit prices, but are requested to offer a lump sum price. The City of High Point will not be bound by oral discussions during evaluation process. Responsible purchasing agent should approve all contact regarding this award.

Revised 6.17.15

CANCELLATION: The City of High Point may terminate/cancel this contract at any time by providing written notice to the bidder at least thirty (30) days before the effective date of termination/cancellation.

SERVICE: Adequate and satisfactory availability of repair parts and supplies, and ability to meet warranty and service requirements are necessary. The City of High Point reserves the right to satisfy itself by inquiry or otherwise as to bidder's capability in this regard.

BID RESULTS: For bid results email Michelle Kiefer at michelle.kiefer@highpointnc.gov NO EARLIER than TWO DAYS following the bid close date.

***** THE CITY OF HIGH POINT WILL NOT BE BOUND BY ORAL DISCUSSION REGARDING THIS REQUEST FOR BID. *****

QUESTIONS: Questions regarding the specifications on this bid should be referred to the purchasing agent.

SPECIAL INTEREST GROUP DEFINITIONS:

Women Owned (51% and controlled by Women)

Handicapped Owned (51% owned & controlled by a Physically Handicapped Person)

Minority Owned (At least 51% of which is owned and controlled by minority group member. (Black, Asian, Hispanic, American Indian)

CONTRACT AGREEMENT
(EXAMPLE ONLY – TO BE COMPLETED BY AWARDED VENDOR)

THIS AGREEMENT made this ____ day of _____, 2015 by and between the **CITY OF HIGH POINT**, a North Carolina corporation (P.O. Box 230, High Point, NC 27261) (the "CITY"); and _____ a _____ Corporation (address of SUPPLIER) for itself and its successors and assigns ("the SUPPLIER").

WITNESSETH, that the *Supplier* and *The City*, for the consideration stated herein, mutually agree as follows:

1. **ACCEPTANCE:** The *Supplier* agrees to sell and *The City* agrees to purchase items described in the specifications and made part of this contract, **Bid #2828-082515** for **Recore of Bus Radiators** in accordance with the terms and conditions listed on the bid.
2. **SPECIFICATIONS:** The *Supplier* agrees that all material (s) and workmanship in and about this contract shall comply with the specifications. In the event of any conflict between *The City's* specifications and the *Suppliers* proposal, **Bid #2828-082515** will prevail.
3. **PRICE:** *The City* shall pay, as a purchase price for **Recore of Bus Radiators** in the amount of \$_____.

This contract is for a one-year period to begin **September 1, 2015** and end **August 31, 2016** with the option to extend the contract for four (4) additional twelve (12) month periods. All terms and conditions of Bid **#2828-082515** apply to this contract award as if attached hereto.

This contract including its appendices embodies the entire understanding between the parties relating to the subject matter contained herein and merges all prior discussions and agreements between them. No agent or representative of the contractor has authority to make any representations, statements, warranties or agreements not herein expressed and all modifications of amendments of this agreement, including the appendices, must be in writing signed by an authorized representative of each of the parties hereto.

Signature Page for Incorporated Firms

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed in 6 original copies on the day and year first above written.

Supplier

By: _____
President

Name above (Typed or Printed)

Title: _____

Street Address

City/State

ATTEST

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary this the _____ day of _____, 20_.

Corporate Name

(SEAL)

Attest: _____
Secretary (Signature)

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledge that he/she is the Secretary of _____, a corporation organized in the state of _____ and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary.
Witness my hand an official seal or seal, this the _____ day of _____, 20_____.

(Notary Public)

(SEAL/STAMP)

My Commission Expires: _____

CITY OF HIGH POINT, NORTH CAROLINA
The City

P O Box 230, High Point, NC 27261

Address

By: _____
Randy E. McCaslin, Deputy City Manager

Lisa Vierling, City Clerk

Signature Page for Un-incorporated Firms

Supplier

By: _____
Authorized Signature

Name above (Typed or Printed)

Title: _____

Street Address

City/State

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid,
certify that _____ personally came before me this day and
acknowledge that he/she is the _____ (title) of _____, a
company organized in the state of _____ and that by authority
duly given and as the act of the company, the foregoing instrument was signed in its name by its
_____ (title).

Witness my hand and official seal or seal, this the _____ day of _____, 20____.

(Notary Public)

(SEAL/STAMP)

My Commission Expires: _____

CITY OF HIGH POINT, NORTH CAROLINA
The City

P O Box 230, High Point, NC 27261
Address

Lisa Vierling, City Clerk

By: _____
Randy E. McCaslin, Deputy City Manager

APPROVAL BY CITY ATTORNEY

Approved as to form and legality:

JoAnne L. Carlyle, City Attorney

Date: _____

APPROVAL BY FINANCE OFFICER

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Jeffrey A. Moore, Director of Financial Services

Date: _____

GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE AND REJECTION**: The City of High Point reserves the right to reject any and all bids, to waive any informality in bids, and unless otherwise specified by the bidder, to accept any item in the bid. If either a unit price or extended price is obviously in error or the other is obviously correct, the incorrect price will be disregarded.
2. **TIME FOR CONSIDERATION**: Unless otherwise indicated on the first page of this document, the offer shall be valid for 45 days from the date of bid opening. Preference may be given to bids allowing not less than 45 days for consideration and acceptance.
3. **TAXES**: No taxes shall be included in any bid prices.
 - a. **FEDERAL**: Generally, states and political subdivisions are exempt from such taxes, as excise and transportation. Exemption is claimed under Registry No. 56-70-0047K as provided by Chapter 32 of the Internal Revenue Code.
 - b. **OTHER**: Bid prices are not to include any sales, import, or personal property taxes. To the extent applicable, they are to be invoiced as a separate item(s).
4. **PRICE ADJUSTMENTS**: Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the bidder to other customers.
 - a. **NOTIFICATION**: Must be given to the City of High Point Purchasing Department, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturers' official notice or other evidence that the change is general in nature.
 - b. **DECREASES**: The City of High Point shall receive full proportionate benefit immediately at any time during the contract period.
 - c. **INCREASES**: All prices offered herein shall be firm against any increase for 180 days from effective date of the proposed contract. After this period, a request for increase may be submitted with the City of High Point reserving the right to accept or reject the increase, or cancel the contract. Such action by the City of High Point shall occur not later than 15 days after receipt and review by the City of High Point of a properly documented request for price increase. Any increases accepted shall become effective on a date to be determined by the City of High Point which:
 - 1) Shall not be later than 30 days after the expiration of the original 15 days reserved by the City of High Point to evaluate the request for increase;
 - d. **INVOICES**: It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.
5. **PAYMENT TERMS**: Payment terms are Net, 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The City of High Point is responsible for all payments under the contract.
6. **AFFIRMATIVE ACTION**: The successful bidder will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without discrimination by reason of race, color, religion, sex, national origin, or physical handicap.
7. **CONDITION AND PACKAGING**: Unless otherwise indicated in the bid, it is understood and agreed that any item offered or shipped on this bid shall be new and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging.
8. **PERFORMANCE BOND AND DEFAULT**: The City of High Point reserves the right to require performance bonds from successful bidder, as provided by law, without expense to the City. Otherwise, in case of default by the Bidder, the City may procure the articles or services from other sources and hold the Bidder responsible for any excess cost occasioned thereby. Default shall occur if the Bidder fails to perform any obligation under the contract and schedule and such failure remains uncured for more than thirty (30) days after receipt of written notice thereof from the City of High Point.
9. **SAMPLES**: Samples of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request, be returned at the bidder's expense. Request for the return of samples must be made within 10 days following opening of bids. Otherwise the samples will become City of High Point property. Each individual sample must be labeled with bidder's name and item number. Samples, on which an award is made, will be retained for the contract period. These will be returned, if requested, ten days prior to expiration of the contract.

10. **SPECIFICATIONS**: Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful bidder will be held responsible therefore. Deviations must be explained in detail on an attached sheet(s).

The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.

11. **SAFETY STANDARDS**: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the successful bidder shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All bidders must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. Construction bidders must comply with *North Carolina Occupational Safety and Health Standards for the Construction Industry, 29CFR 1926*. In addition, bidders shall comply with all applicable occupational health and safety and environmental rules and regulations. Bidders shall effectively manage their safety and health responsibilities including:

1. **Accident Prevention**

Prevent injuries and illnesses to their employees and others on or near their job site. Bidder managers and supervisors shall ensure employer's personnel safety by strict adherence to established safety rules and procedures.

2. **Environmental Protection**

Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.

3. **Employee Education and Training**

Provide education and training to all bidders employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

12. **INFORMATION AND DESCRIPTIVE LITERATURE**: Bidders are to furnish all information requested and in the spaces provided on the bid form. Further, as may be specified elsewhere, each bidder must submit with his proposal: cuts, sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid does not satisfy this provision. Bids, which do not comply with these requirements, will be subject to rejection.

13. **PROMPT PAYMENT DISCOUNTS**: Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.

14. **AWARD OF CONTRACT**: As directed by statute, qualified bids will be evaluated and acceptance made of the lowest and best bid most advantageous to the City of High Point as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the City to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the City or the bidder, the City reserves the right to accept any items or groups of items on a multi-item bid.

The City reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the City of High Point to be pertinent or peculiar to the purchase in question.

15. **GOVERNMENTAL RESTRICTIONS**: In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the successful bidder to notify the City of High Point Purchasing Department at once, indicating in his letter the specific regulation which required such alterations. The City of High Point reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.

16. **M/WBE**: Pursuant to General Statute 143-48 and Executive Order #77, the City of High Point invites and encourages participation in this procurement process by businesses owned by minorities, women, and the handicapped.

17. **INSURANCE**:

COVERAGE - During the term of the contract, the bidder at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the bidder shall provide and maintain the following coverage and limits:

a. **Worker's Compensation** - The bidder shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all bidders' employees who are engaged in

any work under the contract. If any work is sublet, the bidder shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.

b. Commercial General Liability - General Liability Coverage, on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)

c. Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under-insured motorist; and \$1,000.00 medical payment.

REQUIREMENTS: Providing and maintaining adequate insurance coverage is a material obligation of the bidder and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The bidder shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any of such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the bidder shall not be interpreted as limiting the bidder's Liability and obligations under the contract. It is agreed that the coverage as stated shall not be canceled or changed until thirty (30) days after written notice of such termination or alteration has been sent by registered mail to the City of High Point Purchasing Department.

18. PATENTS AND COPYRIGHTS: The Bidder shall hold and save the City of High Point, its officers, agents, and employees, harmless from liability of any kind, including costs and expenses on account of any patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.

Any and all copy, art, designs, negatives, photographs, or other tangible items created pursuant to bidder's performance of this project shall be the property of City of High Point and shall be delivered to City upon completion of the project. Such property shall be transferred to City in excellent, reusable condition.

In addition, the copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the bidder's performance of this project shall vest in the City, and the bidder agrees to assign all rights therein to the City. Bidder further agrees to provide the City with any and all reasonable assistance, which the City may require to obtain copyright registrations or to perfect its title in any such work, including the execution of any documents submitted by the City.

19. PATENT AND COPYRIGHT INDEMNITY: BIDDER will defend or settle, at its own expense, any action brought against Customer to the extent that it is based on a claim that the product(s) provided pursuant to this agreement infringe any U.S. copyright or patent; and will pay those costs, damages and attorney's fees finally awarded against Customers in any such action attributable to any such claim, but such defense, settlements and payments are conditioned on the following (1) that BIDDER shall be notified promptly in writing by Customer of any such claim; (2) that BIDDER shall have sole control of the defense of any action on such claim and of all negotiations for its settlement or compromise; (3) that Customer shall cooperate with BIDDER in a reasonable way to facilitate the settlement of defense of such claim; (4) that such claim does not arise from Customer modifications not authorized by the BIDDER or from the use of combination of products provided by the BIDDER with products provided by the Customer or by others; and (5) should such product(s) become, or in the BIDDER's opinion likely to become, the subject of such claim of infringement, then Customer shall permit BIDDER, at BIDDER's option and expense, either to procure for Customer the right to continue using the product(s), or replace or modify the same so that it becomes non-infringing and performs in a substantially similar manner to the original product; or (c) upon failure of (a) or (b) despite the reasonable efforts of the BIDDER for a sold product or licensed software, return the price paid for the licensed software and any product dependent thereon.

20. ADVERTISING: Bidder agrees not to use the existence of this contract or the name of the City of High Point as a part of any commercial advertising without prior approval of the City of High Point Purchasing Department.

21. EXCEPTIONS: All proposals are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions and the submission of other terms and conditions, price catalogs, and other documents as part of a Bidder's response will be waived and have no effect on this Request for Proposal or any other contract that may be awarded resulting from this solicitation. The submission of any other terms and conditions by a Bidder may be grounds for rejection of the Bidder's proposal. The Bidder specifically agrees to the conditions set forth in the above paragraph by affixing his name on the signatory page contained herein.

22. CONFIDENTIAL INFORMATION: As provided by statute and rule, the City of High Point will consider keeping trade secrets which the bidder does not wish to be DISCLOSED confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.

23. ASSIGNMENT: No assignment of the bidder's obligations nor the bidder's right to receive payment hereunder shall be permitted. However, upon written request approved by the City of High Point Purchasing Department, solely as a convenience to the bidder, the City of High Point may:

- a. Forward the bidder's payment check directly to any person or entity designated by the bidder, and
- b. Include any person or entity designated by bidder as a joint payee on the bidder's payment check.

In no event shall such approval and action obligate the City of High Point to anyone other than the bidder and the bidder shall remain responsible for fulfillment of all contract obligations.

24. **ACCESS TO PERSONS AND RECORDS:** The City Auditor shall have access to persons and records as a result of all contracts or grants entered into by the City in accordance with General Statute 147-64.7.

25. **INSPECTION AT BIDDER'S SITE:** The City of High Point reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective bidder prior to contract award, and during the contract term as necessary for the City of High Point's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.

26. **AVAILABILITY OF FUNDS:** Any and all payments of compensation of this specific transaction, its continuing or any renewal or extension are dependent upon and subject to the allocation of appropriation of funds to the City for the purpose set forth in this agreement.

27. **GOVERNING LAWS:** All contracts, transactions, agreements, etc., are made under and shall be governed by and construed in accordance with the laws of the State of North Carolina.

28. **ADMINISTRATIVE CODE:** Bids, proposals, and awards are subject to applicable provisions of the North Carolina Administrative Code.

29. **EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.

30. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) City of High Point General Contract Terms and Conditions, and (4) City of High Point Bid Terms and Conditions.

31. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the City named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from the City of High Point Purchasing Department. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source is of no effect.

32. **SITUS:** The place of all contracts, transactions, agreements, their situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

FEDERAL REQUIREMENTS AND SPECIAL CONDITIONS

for SUPPLIES and EQUIPMENT

1. General

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Act, as amended. References include, but are not limited to, the Master Agreement FTA MA(21), dated October 1, 2014; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated November 6, 2001 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

NOTE: "BIDDER" AND "CONTRACTOR" ARE USED SYNONYMOUSLY

2. Federal Changes

The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this contract may be modified, amended or promulgated from time to time during the term of this contract. The Contractor agrees and shall comply with the most recent of such Federal requirements that will govern this contract at any particular time, unless the Federal Government determines otherwise. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the contract is executed and may apply to this contract. The Contractor's failure to so comply shall constitute a material breach of this contract. The following identifies, but is not limited to, the federal requirements that shall apply to this contract.

3. Notification of Federal Participation

In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the City of High Point agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract. (Public Law 102-141)

4. Conflict of Interest

No employee, officer, board member, or agent of the grantee (the State or sub recipient) shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

5. Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract,

grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. ***The requisite lobbying certification (attach Standard Form-LLL if necessary) is included (ATTACHMENT A) and must be executed for contracts of \$100,000 or more and prior to the award of the contract.***

6. Contracting with Disadvantaged Business Enterprises

The Federal Fiscal Year goal has been set for the grantee or subgrantee in an attempt to match projected procurements with available qualified disadvantaged businesses. The goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established as set forth by the Department of Transportation Regulations 49 C.F.R. Part 26, January 29, 1999, and authorized by:

- a) Titles I, III, V and VI of ISTEA, Pub. L. 102-240, or
- b) Federal transit laws in Title 49, U.S. Code, or
- c) Federal transit laws in Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, (name of grantee) may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

- a) Policy - It is the policy of the Department of Transportation and (name of grantee) that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Contract. The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts. The grantee or sub grantee shall promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of procurement activities are encouraged.

- b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the grantee or sub grantee may declare the contractor noncompliant and in breach of contract.
- d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with grantee or sub grantee DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of grantee or sub grantee and will be submitted to grantee or sub grantee upon request.
- e) The grantee or sub grantee will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:
- Identification of qualified DBE
 - Available listing of Minority Assistance Agencies
 - Holding bid conferences to emphasize requirements

7. Civil Rights

Contractors and subcontractors shall assure and comply with all requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sect. 2000d; 49 U.S.C. Sect. 5332; and DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. part 21, and any implementing requirements FTA may issue.

8. Equal Employment Opportunity

The contractor or any sub-contractor may not discriminate against any employee or applicant for employment, because of race, color, age, creed, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9. Access Requirements of Individuals with Disabilities

Contractors shall agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. Subsection 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. Section 794; 49 U.S.C. Section 5301(d); and the following Federal regulations including any amendments thereto:

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;
- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/ U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609;
- (10) Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194; and
- (11) Any implementing requirement FTA may issue.

10. Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Sect. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance provided by FTA.

11. Clean Water

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sect. 1251 et seq. The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

12. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended 42 U.S.C. subsection 4321 et seq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994, FTA statutory requirements on environmental matters at 49 U.S.C. section 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq. and joint FHWA FTA regulations, "environmental Impact and Related procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and when promulgated, FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decision-making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 1420 and 49 C.F.R. Part 623.

13. Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

14. Recycled Products

The Recycled Products requirement applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000. These requirements flow down to all contractor and subcontractor tiers.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. These items include:

Paper and paper products, excluding building and construction paper grades.

Vehicular products:

- (a) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils;
- (b) Tires, excluding airplane tires;
- (c) Reclaimed engine coolants, excluding coolants used in non-vehicular applications.

Construction products:

- (a) Building insulation products, including the following items:
 - (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
 - (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
 - (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
 - (4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
- (c) Cement and concrete, including concrete products such as pipe and block, containing coal fly ash or ground granulated blast furnace (GGBF) slag.
- (d) Carpet made of polyester fiber for use in low- and medium-wear applications.
- (e) Floor tiles and patio blocks containing recovered rubber or plastic.

Transportation products:

- (a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.

Park and recreation products:

- (a) Playground surfaces and running tracks containing recovered rubber or plastic.

Landscaping products:

- (a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation;
- (b) Compost made from yard trimmings, leaves, and/or grass clippings for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

Non-paper office products:

- (a) Office recycling containers and office waste receptacles;
- (b) Plastic desktop accessories;
- (c) Toner cartridges;
- (d) Binders; and
- (e) Plastic trash bags.

15. Cargo Preference

46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Department, so that additional requirements and clauses may be attached to this Contract.

16. Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds.

The Buy America requirements flow down from FTA recipients and sub recipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Effective July 24, 1995 small purchases (under the \$100,000 threshold) made with FTA funds, will not be subject to the Buy America requirement. The value of small purchases should be determined by using "contract price" and not "unit price".

These regulations require, as a matter of responsiveness, that the bidder or offeror submit to the purchaser the appropriate Buy America certification (Appendix B or C) with all bids where FTA funds are provided, except those subject to a general waiver or less than \$100,000. Bids or offers that are not accompanied by a completed Buy America Certification must be rejected as nonresponsive. The certification requirement does not apply to lower tier subcontractors.

17. Debarment and Suspensions

Executive Order 12549, as implemented by 49 CFR Part 29 prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts.

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$25,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$25,000.

Instructions for Certification:

- (1) **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below .**
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and/or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.

- (5) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).
- (6) The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
- (8) Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, (Recipient) may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction"

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. §29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

18. Geographic Preference

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

19. Termination or Cancellation of Contract

Termination or cancellation of the contract, in whole or in part, may be determined by the project if it is in the best interest of the project. A notice of termination shall be delivered to the Contractor, specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination

becomes effective. The Contractor shall be paid for work that has been performed and completed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid. A 30 day notice of termination shall be required.

20. Breach of Contract

If the Contractor fails to make delivery of the equipment, supplies, or services within the specified terms of the contract, or fails to perform within the provisions of the contract, the contract may be terminated by reason of default or breach. A written notice of default or breach of contract shall be presented to the Contractor within three (3) working days of such failure. The Contractor will only be paid the contract price for equipment delivered and accepted in accordance with the requirements set forth in the contract.

If it is determined that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the project, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

The project in its sole discretion may, in the case of breach of contract, allow the Contractor a specified period of time in which to correct the defect. In such case, the notice of termination will state the time period in which the correction is permitted and other appropriate conditions.

If Contractor fails to remedy to the project's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within twenty (20) days after written notice from the project setting forth the nature of said breach or default, the project shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the project from also pursuing all available remedies against Contractor and its sureties for said breach or default.

21. Resolution of Disputes

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the project. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the project. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the project shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance during Dispute - Unless otherwise directed by project, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

22. Protest Procedures

All protests shall be filed, handled, and resolved in a manner consistent with the requirements of Federal Transit Administration (FTA) Circular 4220.1E Third Party Contracting Guidelines dated June 19, 2003 and the City of High Point's Protest Procedures which are on file and available upon request.

Current FTA policy states that: "Reviews of protests by FTA will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of federal law or regulations will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local officials." (FTA Circular 4220.1E, Section 7, paragraph I., Written Protest Procedures)

Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed 15 days prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. To be filed on a given day, protests must be received by 4:30 p.m. current local time. Any protest received after that time will be considered to be filed on the next day. Incomplete submissions will not be considered filed until all information is complete. Unless the time limit for receiving the protest is extended for good cause, a protest that is received after the time limit will not be considered.

All protests should be filed in writing with the City Manager, City of High Point, P.O. Box 230 (211 S. Hamilton St.), High Point, NC 27261. No other location shall be acceptable. To be complete, protests must contain the following information:

1. The protester's name, address, telephone number, and fax number;
2. The solicitation/bid number;
3. A detailed statement of all factual and legal grounds for protests and an explanation of how the protester was prejudiced;
4. Copies of relevant documents supporting protester's statement;
5. A request for ruling by the City of High Point;
6. Statement as to form of relief requested;
7. All information establishing that the protester is an interested party for the purpose of filing a protest; and
8. All information establishing the timeliness of the protest.

All protests must be signed by an authorized representative of the protester.

When a protest is filed before an award, an award shall not be made until the matter is resolved unless based on written finding that 1) the supplies or services are urgently required, or 2) delivery or performance would be unduly delayed by failure to make the award promptly, or 3) a prompt award would be in the best interest of the City. Should the City postpone the date of bid submission owing to a protest or appeal of the solicitation specifications, addenda, dates, or any other issue relating to the procurement, the City shall notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that an appeal/protest has been filed, and the due date for the bid submission shall be postponed until the City has issued its final decision.

When a protest is filed within ten (10) days after an award or five (5) days after a debriefing date was offered to the protester under a timely debriefing request, whichever is later, performance shall be immediately suspended pending resolution of the protest. However, contract performance may continue, notwithstanding the protest, based on written finding that 1) contract performance would be in the best interest of the City, or 2) urgent and compelling circumstances that significantly affect the interests of the City will not permit waiting for a decision.

The City Manager shall make a decision on the protest within ten (10) working days from the receipt of the protest. The written decision will respond to the issues raised by the protester and will address any other issues, which even if not raised by the protester, that may have been identified as being relevant to the fairness of the procurement process. The decision will be delivered to the protester by "Certified Mail, Return Receipt Requested." In extreme cases, it may take longer than ten (10) working days to issue a decision. In these cases, the protester and all other interested parties will be notified of the delay. Any decision rendered by the City Manager may be appealed to the City Council. The protester has the right within five (5) working days of receipt of determination to file an appeal restating the basis of the protest and the grounds of the appeal. In the appeal, the protester shall only be permitted to raise factual information previously provided in the protest or discovered subsequent to the City Manager's decision and directly related to the grounds of the protest. The City Council's decision shall constitute the final administrative remedy of the City of High Point.

If the City Manager or City Council find for the protester, one or more of the following remedies may be granted:

1. Terminate the contract.
2. Re-compete the requirement.
3. Issue a new solicitation.
4. Refrain from exercising options under the contract.
5. Award a contract consistent with statutes and regulations.
6. Amend the solicitation provisions that gave rise to the protest and continue with the procurement.
7. Such other remedies as the decision-maker may determine are necessary to correct a defect.

The bidder may withdraw its protest or appeal at any time before the City issues a final decision.

A protester must exhaust all administrative remedies with the City before pursuing a protest with the Federal Transit Administration (FTA). However, if the protester believes that the City of High Point failed to review the complaint or protest or failed to follow its own protest procedures, the protester may file an appeal to the FTA office below:

Regional Administrator
Federal Transit Administration, Region IV
61 Forsyth Street, SW
Suite 17T50
Atlanta, GA 30303-8917

The protester must file with the FTA no later than five (5) days after the City Council's final decision is rendered, with a concurrent copy of the appeal to the City of High Point. The submission to the FTA should include the name and address of the protester, a statement of the grounds for protest and any supporting documentation, a copy of the local protest filed with the City of High Point, and a copy of the City of High Point's decision.

The City of High Point will submit to the FTA any required information requested in order for the FTA to make a determination, including a copy of these protest procedures, a description of the process followed concerning the protest in question, and any supporting documentation. The City of High Point will provide to the protester any material submitted to the FTA.

23. Nonconstruction Employee Protection Requirements

Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C Sections 327 through 333 are mandated under DOL regulation 29 C.F.R. Section 5.5.

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The Project shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

24. No Federal Government Obligations to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

25. False or Fraudulent Statements and Claims

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the

authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

26. Reporting, Record Retention, and Access

The following access to records requirements apply to this Contract:

1. In accordance with 49 C. F. R. 18.36(i)(10), the Contractor agrees to provide the Purchaser, the N.C. Department of Transportation, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives

access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital or other non-profit organization and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R.19.48(d), the Contractor agrees to provide the Purchaser, the N.C. Department of Transportation, the FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

3. Where any Purchaser which is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

4. The Contractor agree to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

5. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.36(i)(11).

27. State and Local Disclaimer

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that

before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

28. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, and any amendments thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause the City of High Point to be in violation of the FTA terms and conditions.

29. Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Solicitor/Purchaser of this Purchase Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any negligent or willful acts or omissions by the Contractor, or the officers, agents, employees, or subcontractors of the Contractor, or the failure to perform or comply with any of the provisions of the Purchase Contract.

30. Seat Belt Usage

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt on the job seat belt use policies and programs for its employees when operating company owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts entered into under this project.

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned _____ certifies, to the best of his or her knowledge and belief, that:
(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.
This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section A 3801 *et seq.*, apply to this certification and disclosure, if any.

Date

Signature of Contractor's Authorized Official

Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this ____ day of _____, 20__, in the State of _____;
and the County of _____.

Notary Public _____

My Appointment Expires _____

ATTACHMENT B

**CERTIFICATE OF COMPLIANCE
FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS
(BUY AMERICA)**

The bidder hereby certifies that it will meet the requirements of 49 U.S.C. Section 5323(j)(1), and the applicable regulations in 49 CFR Part 661.

DATE _____

SIGNATURE _____

TITLE _____

COMPANY _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public _____

My Appointment Expires _____

ATTACHMENT C

**CERTIFICATE OF NON-COMPLIANCE
FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS
(BUY AMERICA)**

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2) (B) or (j)(2)(D) and the regulations in 49 CFR Part 661.7.

DATE _____

SIGNATURE _____

TITLE _____

COMPANY _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public _____

My Appointment Expires _____